

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNION MUTUAL FIRE INSURANCE COMPANY,

Plaintiff,

Case No.:

vs.

COMPLAINT

RICHARD KARLSSON,
THE ESTATE OF LAWRENCE J. CALCAGNO, and
JOHN J. CALCAGNO as Administrator for
THE ESTATE OF LAWRENCE J. CALCAGNO,

Defendants.

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Plaintiff, Union Mutual Fire Insurance Company, by and through its attorneys, Hurwitz & Fine, P.C., as and for its Complaint herein, alleges upon information and belief as follows:

1. At all times hereinafter mentioned, Plaintiff, Union Mutual Fire Insurance Company (“Union Mutual”) was and still is an insurance company with a principal place of business located in Montpelier, Vermont, and is authorized to issue insurance policies in the State of New York.
2. Upon information and belief, Defendant Richard Karlsson (“Mr. Karlsson”), was and still is a resident of the County of Richmond and the State of New York.
3. Upon information and belief, Lawrence J. Calcagno is deceased and resided in the County of Richmond and State of New York at the time of his death.
4. Upon information and belief, an Estate has been set up for Lawrence J. Calcagno, and John J. Calcagno is the Administrator.
5. Upon information and belief John J. Calcagno resides in the State of New Jersey.
6. Upon information and belief, the amount in controversy in this action exceeds \$75,000.00.

7. Upon information and belief, the District Court has jurisdiction over this action pursuant to 28 U.S.C. Section 1332(a)(1), 28 U.S.C. Section 2201, and based upon the parties' diversity of citizenship and its monetary threshold.

8. Upon information and belief, venue in this judicial district is proper pursuant to 28 U.S.C. Section 1391(b)(1) as the defendants to this action reside within this district.

9. The Estate of Lawrence J. Calcagno and John J. Calcagno as Administrator for the Estate of Lawrence J. Calcagno are named as defendants herein for complete relief to be afforded to all who may be impacted by the outcome of this declaratory judgment action.

THE UNION MUTUAL POLICY ISSUED TO MR. KARLSSON

10. Union Mutual issued a Commercial General Liability Policy, policy number 314PK-24103-02, to Richard Karlsson for the policy period from July 23, 2015 to July 23, 2016 (the "Policy"). The terms and conditions of the Policy are incorporated herein by reference.

11. The premises at 536 Richmond Terrace, Staten Island, New York 10301 (the "Premises") is the sole designated risk location, meaning that it is the sole location covered under the Policy.

12. Subject to its terms and conditions, the Policy provides coverage for bodily injury subject to a \$1,000,000 per occurrence limit.

13. Based upon the information provided in Mr. Karlsson's application for insurance, the Policy was given the classification of "Apartment" as represented by Insurance Services Office Classification code number 60010.

14. The Policy also contains an endorsement titled COMMERCIAL GENERAL LIABILITY COVERAGE FORM CLASSIFICATION LIMITATION (GL UM 0688 03 14NY).

15. Per its terms, the Classification Limitation endorsement limited the scope of coverage under the Policy to the operation of an apartment, the classification shown on the Policy's declarations page.

THE UNDERLYING INCIDENT AND UNDERLYING ACTION

16. On or about February 16, 2016, February 22, 2016, and March 2016, Lawrence J. Calcagno alleges that he was injured when he slipped and fell on snow and/or ice at the Premises (collectively the "Underlying Incident").

17. As a result of the Underlying Incident, Calcagno claims that he was injured.

18. Thereafter, Calcagno commenced an action in New York Supreme Court, Richmond County, styled *The Estate of Lawrence J. Calcagno and John J. Calcagno, as Administrator for the Estate of Lawrence J. Calcagno vs. Richard Karlsen, ABC Corp. I-X (said names being fictitious, true names presently unknown), Def. Maintenance Co. I-X (said names being fictitious, true names presently unknown), GHI John Does I-X (said names being fictitious, true names presently unknown), and/or JKL Snow Removal Co. I-X (said names being fictitious, true names presently unknown)*, bearing Index Number 150331/2019 (the "Underlying Action").

19. The Complaint in the Underlying Action alleges that Lawrence J. Calcagno rented a room in a boarding house owned by Mr. Karlsson at the Premises.

20. The Complaint in the Underlying Action also alleges that Lawrence J. Calcagno was injured on February 16, 2016, February 22, 2016, and March 2016 when he slipped and fell on snow and ice.

UNION MUTUAL'S DISCLAIMER OF COVERAGE

21. Union Mutual first received notice of the Underlying Incident and Underlying Action on March 20, 2019.

22. Union Mutual immediately undertook an investigation.
23. During its investigation, Union Mutual learned that Mr. Karlsson was operating a boarding house at the Premises.
24. Union Mutual also learned that Lawrence Calcagno first came to live at the boarding house at the Premises in November 2015 and occupied a small room on the second floor while he was there.
25. By correspondence dated March 29, 2019, Union Mutual disclaimed coverage for the Underlying Incident and Underlying Action the Classification Limitation. The terms of Union Mutual's March 29, 2019 disclaimer of coverage are incorporated herein by reference.
26. Despite its disclaimer, Union Mutual assigned Mr. Karlsson a gratuitous defense in the Underlying Action pending the outcome of this declaratory judgment action.

FIRST CAUSE OF ACTION

27. Union Mutual repeats and realleges each and every allegation contained in paragraphs 1 through 26 as if fully set forth herein.
28. The Classification Limitation endorsement in the Policy limits the scope of coverage under the Policy to the operation of an Apartment, the Policy's classification.
29. Mr. Karlsson was operating a boarding house or rooming house at the Premises, not an Apartment.
30. A boarding or rooming house has a different classification than an Apartment.
31. A boarding or rooming house presents different risks than an Apartment.
32. Mr. Karlsson is not entitled to coverage for the Underlying Incident or Underlying Action under the Policy because he was not operating an Apartment, which is the only covered operation under the Policy.

WHEREFORE, Union Mutual Fire Insurance Company respectfully requests judgment:

- (1) declaring that Union Mutual has no obligation to defend or indemnify Richard Karlsson in connection with the Underlying Incident or the lawsuit styled *The Estate of Lawrence J. Calcagno and John J. Calcagno, as Administrator for the Estate of Lawrence J. Calcagno vs. Richard Karlsen, ABC Corp. I-X* (said names being fictitious, true names presently unknown), Def. Maintenance Co. I-X (said names being fictitious, true names presently unknown), GHI John Does I-X (said names being fictitious, true names presently unknown), and/or JKL Snow Removal Co. I-X (said names being fictitious, true names presently unknown), Supreme Court, Richmond County, Index Number 150331/2019;
- (2) declaring that Union Mutual may withdraw from the defense of Richard Karlsson in the lawsuit styled *The Estate of Lawrence J. Calcagno and John J. Calcagno, as Administrator for the Estate of Lawrence J. Calcagno vs. Richard Karlsen, ABC Corp. I-X* (said names being fictitious, true names presently unknown), Def. Maintenance Co. I-X (said names being fictitious, true names presently unknown), GHI John Does I-X (said names being fictitious, true names presently unknown), and/or JKL Snow Removal Co. I-X (said names being fictitious, true names presently unknown), Supreme Court, Richmond County, Index Number 150331/2019; and
- (3) granting such other and further relief as may be just, equitable, and proper, together with the costs and disbursements of this action.

Dated: Buffalo, New York
May 15, 2019

HURWITZ & FINE, P.C.

/s/ Brian D. Barnas
Brian D. Barnas, Esq.
Attorneys for Plaintiff,
Union Mutual Fire Insurance Company
1300 Liberty Building
Buffalo, New York 14202
(716) 849-8900
bdb@huwitzfine.com